

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN S. RHINE,

Petitioner,

vs.

CDC, et al.,

Respondents.

No. C 07-4729 JF (PR)

ORDER OF DISMISSAL

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. In the petition, Petitioner alleges that a private law firm did not include his personal complaints in a lawsuit against the California Department of Corrections and Rehabilitation. Petitioner also alleges claims concerning the conditions of his confinement at the California Mens Colony in San Luis Obispo, California.

The Supreme Court has declined to address whether a challenge to a condition of confinement may be brought under habeas. See Bell v. Wolfish, 441 U.S. 520, 526 n.6 (1979); Fierro v. Gomez, 77 F.3d 301, 304 n.2 (9th Cir.), vacated on other grounds, 519 U.S. 918 (1996). However, the Ninth Circuit has held that “habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner’s sentence.” Ramirez v. Galaza, 334 F.3d 850, 859

(9th Cir. 2003) (implying that claim, which if successful would “necessarily” or “likely” accelerate the prisoner’s release on parole, must be brought in a habeas petition). The preferred practice in the Ninth Circuit has been that challenges to conditions of confinement should be brought in a civil rights complaint. See Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action is proper method of challenging conditions of confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition on basis that challenges to terms and conditions of confinement must be brought in civil rights complaint).

Accordingly, the Court dismisses this habeas action because Petitioner’s claims do not challenge the legality of his conviction or sentence. The Court notes that Petitioner’s claims against a private law firm are not cognizable under § 1983. Petitioner claims concerning the conditions of his confinement are more appropriately addressed in a civil rights complaint pursuant to 42 U.S.C. §1983.

CONCLUSION

The instant petition for writ of habeas corpus is DISMISSED without prejudice. Petitioner may re-file his claims in a new action under a civil rights complaint pursuant to 42 U.S.C. §1983. The Court notes that if Petitioner re-files his claims in a civil rights action pursuant to 42 U.S.C. § 1983, he should file his complaint in the United States District Court for the Central District of California, the appropriate venue for claims that occurred at the California Mens Colony in San Luis Obispo, California. The Clerk shall terminate any pending motions and close the file.

IT IS SO ORDERED.

DATED: 9/19/07


JEREMY FOGEL
United States District Judge

1 A copy of this ruling was mailed to the following:

2 John S. Rhine
3 F-25840
4 California Mens Colony -West
5 P.O. Box 8101
6 San Luis Obispo, CA 93401
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